PENSIONS EUROPE

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PensionsEurope Newsletter 2022/03

Table of Contents

1. The European Commission sends EIOPA the CfA on the IORP II Directive evaluation and review

On 16 June 2020, the European Commission (EC) has sent to EIOPA a Call for technical advice (CfA) regarding the evaluation and review of the IORP II Directive. The EC is asking EIOPA's advice on many topics, including the areas mentioned in article 62 of the IORP II Directive, the assessment of possible options related to the need for and possible ways to adapt the regulatory framework to the shift from DB to DC schemes, an exploration of the ways to strengthen the sustainability aspects of the fiduciary duties and stewardship rules of pension funds, and the consideration of possible changes to prudential requirements to include diversity and inclusion issues in relation to management bodies. With regard to the latter of these matters, it should also be noted that EIOPA sent a letter on diversity in management bodies to the European Commission, the European Parliament, and the Council of EU, asking to amend the IORP II Directive (and Solvency II) by requiring IORPs to put in place a policy promoting diversity on management or supervisory bodies which includes a target for underrepresented gender in their management and supervisory bodies.

EIOPA must deliver the technical advice by 1 July 2023. With this timeframe, EIOPA will have two years implementation data (mid-2020 to mid-2022) as a basis for the assessment. EIOPA is expected to consult widely within the available timeframe, and we look forward to engaging with EIOPA on this important matter. This timeframe implies it will not be feasible to review the IORP II Directive by 13 January 2023, set by the Directive itself. The current European Commission's mandate ends in 2024, thus leaving up to the next Commission the decision on the legislative proposal amending the IORP II Directive.

2. Reporting – EIOPA needs more data from IORPs?

Currently EIOPA is conducting a consultation on the review of IORPs' reporting requirements, and the consultation is open until 18 June. We have doubts if EIOPA is able to analyse all the data that it currently receives, and if it is the right moment to introduce additional new reporting requirements for IORPs and if EIOPA needs all that data. We have also stressed to EIOPA that in its analysis of pensions data, EIOPA should also explore various other pension data sources, particularly from the statistics held at the national level, new ECB pension funds statistics, OECD pension statistics, and the Centralised Securities Database (CSDB).

On 15 December 2021, the Commission adopted a strategy on supervisory data in EU financial services which builds upon the conclusions of the fitness check of EU supervisory reporting requirements about which we have had an engaged and positive dialogue with the Commission over the past years. One of the objectives of the strategy is to minimise the aggregate reporting burden for all relevant parties, and it is important to keep this objective in mind also in this EIOPA review.

EIOPA's proposed amendments to IORPs' current reporting requirements contain information on derivatives, cash flows, high-level look-through data on IORPs investments in UCITs, cross-border data by host country, and detail on the NACE code. In general, they do not reflect the minimumharmonization character of the IORP II Directive. Rather than extending the EIOPA reporting package, it would be more appropriate if NCAs decided on the possible need for additional data to improve supervision of the risks faced by IORPs.

If the EIOPA Board of Supervisors finally decides to introduce some new reporting requirement for IORPs, it is essential that any double reporting is avoided, and only information needed to supervise IORP sector should be required. In particular, this is regardless of what information insurance companies are required to provide to EIOPA. Particularly, we are concerned about the extra burden and costs of new requirements on small and medium sized IORPs. Such entities do not represent the same systemic risks that (even the smallest) insurers do.

3. Clearing – PensionsEurope thanks the Commission for the extension of the exemption

PensionsEurope is pleased that on 9 June the European Commission published a report and a delegated regulation on the final one-year extension of Pensions Scheme Arrangements' (PSAs) exemption from clearing obligation to start applying the clearing obligation to PSAs on 19 June 2023. This extension should allow to find a solution to the key challenge for PSAs to post variation margin in cash in case of market stress when they may be required by CCPs to post significant amounts of variation margin.

We have proposed to the Commission that the best way forward would be a structural solution, involving central bank liquidity, as central clearing houses in Europe would suffice to provide (indirect) central bank liquidity utilizing their cleared repo platform. From a risk management perspective, the European clearing houses would become then the superior platform to clear derivatives transactions for PSAs. It is important to note that we have not asked for direct liquidity, but just mere (temporary) collateral transformation of (European) government bonds into cash (which are better match for pension funds liabilities than cash).

The above-mentioned delegated regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union, but before that the European Parliament and Council must approve it (/not object to it). The usual timeframe to allow the Council and the EP to execute their scrutiny powers on delegated regulations is three months.

We are happy that on 16 June ESMA published a statement on the implementation of the clearing obligation for PSAs, in which ESMA e.g. states that: *''… from 19 June 2022 and until the approval process of the Delegated Act has been completed, ESMA expects competent authorities not to prioritise their supervisory actions in relation to the CO for PSAs and to generally apply their risk-based supervisory powers in their day-to-day supervision of applicable legislation in this area in a proportionate manner.''*

Particularly larger pension funds are operationally ready to clear meaning that they have clearing arrangements in place and that they clear some trades voluntarily, but many smaller pension funds have not yet started clearing. As in one year they must start clearing, they must start preparing themselves for it now.

4. Withholding tax – PensionsEurope supports the EU wide harmonised framework

On 13 June, we provided input to the European Commission's consultation on withholding taxes (WHT) and the new EU system to avoid double taxation. We strongly agree with the Commission that there is a need for EU action to make WHT refund/relief procedures more efficient.

Particularly we support a standardised EU-wide system for WHT tax relief at source which would allow pension funds avoid lengthy and costly procedures of WHT reclaim. Currently the relief at source is not available widely enough in the EU, while it is available in many other capital markets, for instance in the US.

There are also many other recent WHT proposals which the EC should thoroughly consider. For instance, we have proposed to the Commission to establish an EU tax register of recognised pension institutions in order that Member States can reciprocally and automatically recognise pension institutions.

In many countries pension institutions invest cross border via specialized investments funds and/or vehicles to increase the economies of scale, and it is important to ensure a tax-neutral treatment of these investment structures as well. Furthermore, establishing a cross-border investment-friendly tax environment in the EU not only requires removing unfair tax treatment but also introducing tax incentives.

According to the Commission, the inputs to the above-mentioned consultation will support the impact assessment that it is currently carrying out. Based on that assessment, the Commission is expected to publish a legislative proposal (a directive) by the end of this year.

5. ESG ratings – PensionsEurope proposes coordinated regulatory approach and framework

On 6 June, we provided input to the European Commission's consultation on the 'Functioning of the ESG ratings market in the European Union and on the consideration of ESG factors in credit ratings'. In general, we share many of the Commission's concerns and welcome the Commission's further work to improve the ratings and the functioning of the market. The current main challenges for pension funds concern ESG data, as there is clearly a lack of reliable and accurate ESG data, which pension funds need to report under the Sustainable Finance Disclosures Regulation (SFDR).

In our above-mentioned input, we proposed to adopt a holistic and coordinated regulatory approach to both financial and non-financial (ESG) data in the EU, as well as establishing a proper regulatory framework for data providers (see pages 12-13 of our input in more detail): (i) ensuring coherence in the EU legislation on data providers' services on financial data, (ii) facilitating direct access to data, and (iii) implementing new transparency and accountability requirements for data providers' activities.

On 24 June, ESMA sent a letter to the Commission providing its findings from the Call for Evidence to gather information on the market structure for ESG rating providers in the EU. According to ESMA's findings, there is a small number of very large non-EU ESG rating providers, and 59 ESG rating providers currently active in the EU. The most common shortcomings are a lack of coverage of a specific industry or a type of entity, insufficient granularity of data, and a lack of transparency around methodologies used by ESG rating providers.

ESMA will now continue supporting the Commission in their assessment of the need for introducing regulatory safeguards for ESG ratings. Subject to the result of the impact assessment, the Commission will propose an initiative to foster the reliability, trust, and comparability of ESG ratings by early 2023.

6. ISSB's exposure draft 'Climate-related Disclosures'

The Chair and Vice-Chair of the International Sustainability Standards Board (ISSB) have published the exposure draft 'Climate-related Disclosures' that builds on the TRWG prototype of the same name. The consultation closes on 29 July 2022. The resulting standard would be the first thematic standard of the ISSB. The standard would be applied prospectively. The Board intends to decide on the effective date after exposure. Earlier application would be permitted.
The main proposals in ED/2022/S2 Climate-related Disclosures generally reflect the proposals in the prototype and are structured around the four TCFD pillars of governance, strategy, risk management, and metrics and targets. Some changes were made to improve specificity and clarity with some added disclosure requirements. The proposals cover the following aspects of climate-related disclosures:

- Objective: The proposed objective of the standard is to require an entity to disclose information about its exposure to climate-related risks and opportunities that would enable users of an entity's general purpose financial reporting to assess the effects of significant climate-related risks and opportunities on the entity's enterprise value.
- Scope: The standard would apply to climate-related risks that the entity is exposed to, including physical risks and transitional risks, and to climate-related opportunities available to the entity.
- Governance: Under the proposed standard, an entity would disclose information that enables users of general-purpose financial reporting to understand the governance processes, controls and procedures used to monitor and manage climate-related risks and opportunities.
- Strategy: An entity would disclose information that enables users of general-purpose financial reporting to understand the strategy for addressing climate-related risks and opportunities.
- Risk management: An entity would disclose information that enables users of general-purpose financial reporting to understand how climate-related risks are identified, assessed, and managed.

- Metrics and targets: An entity would disclose information that enables users of general-purpose financial reporting to understand the entity's performance in measuring, monitoring, and managing climate-related risks and opportunities.

7. EU Sustainable Reporting Standards

EFRAG launched a public consultation on the Draft European Sustainability Reporting Standards (ESRS) Exposure Drafts (EDs) developed by the EFRAG PTF-ESRS. The consultation closes by 8 August 2022.

The European Commission's proposal for a Corporate Sustainability Reporting Directive (CSRD) envisages the adoption of EU Sustainability Reporting Standards (ESRS). In this context, EFRAG was requested in a letter from Commissioner McGuinness to provide Technical Advice to the European Commission in the form of fully prepared draft standards and/or draft amendments to Sustainability Reporting Standards.

In this context and following the EFRAG's Due Process Procedures on EU Sustainability Reporting Standard-Setting, which stipulate the requirements to be followed in its role as technical advisor to the European Commission in the preparation of draft ESRS or draft amendments of ESRS, the PTF-ESRS handed over its Draft ESRS for public consultation.

These EDs correspond to the first set of standards required under the CSRD proposal and cover the full range of sustainability matters: environment, social, governance and cross-cutting standards. The current public consultation is organized to receive feedback from constituents on three key aspects of the EDs:

1. The relevance of (i) the proposed architecture, (ii) the implementation of the CSRD principles and (iii) the overall content of each ED
2. The possible options for prioritizing / phasing-in the implementation of the ESRS
3. The adequacy of each disclosure requirement mandated by each ED.

As such, the public consultation survey is organised in three corresponding sections that can be accessed and answered independently:

1. Overall substance of the Exposure Drafts
2. ESRS Implementation prioritization / phasing-in
3. Adequacy of Disclosure Requirements

In order to ease the survey navigation, these 3 sections are organised in a chapter menu, as follows:
1A. Overall ESRS Exposure Drafts relevance – Architecture
1B. Overall ESRS Exposure Drafts relevance – Implementation of CSRD principles
1C. Overall ESRS Exposure Drafts relevance – Exposure Drafts content
2. ESRS implementation prioritization / phasing-in
3A. Adequacy of Disclosure Requirements – Cross cutting standards
3B. Adequacy of Disclosure Requirements – Environmental standards
3C. Adequacy of Disclosure Requirements – Social standards
3D. Adequacy of Disclosure Requirements – Governance standards

8. AEIP & PensionsEurope announce the organization of a joint webinar as part of the 2022 edition of the European Retirement Week

AEIP and PensionsEurope are organizing a joint webinar in the afternoon of 29 November 2022 as part of the second edition of the European Retirement Week. More information on the program will soon be available.

The second edition of the European Retirement Week will take place from 28 November to 3 December 2022. The European Retirement Week is an initiative of 14 European associations with the goal of providing a platform to debate the future of pensions and raise citizens' awareness on the need to save for retirement.